IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

MFA.No. 917 of 2000()

IC.85/1992 of E.I.COURT, KOZHIKODE
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APPELLANT - RESPONDENT:

THE REGIONAL DIRECTOR, EMPLOYEES
STATE INSURANCE CORPORATION, THRISSUR.

BY ADV. SRI.TPM.IBRAHIM KHAN

RESPONDENTS - APPLICANT:

M/S. SAVARI MOTORS, EAST NADAKKAVU P.O.,
ERANHIPALAM, KOZHIKODE, REPRESENED
BY ITS MANAGING PARTNER SHRI H.K. ABDU SAMAD.

BY ADV. SRI.K.M.FIROZ

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 21.11.2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 917 OF 2007

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Dated this the 21st day of November, 2007

J U D G M E N T

The Regional Director, Employees Insurance Corporation, Thrissur, has filed this appeal challenging the order passed by the Employees Insurance Court, Kozhikode, in I.C. No.85 of 1992 by which it set aside a demand made by the appellant for contribution on the ground that the respondent establishment is not liable to be covered under the provisions of the Employees State Insurance Act.

2. An inspection in the establishment of the respondent was conducted by the Inspector of the appellant on 10.1.1992. The Inspector, as per Exhibit B1, reported that manufacturing process had carried out with the aid of power and 12 persons were working in the establishment. Appellant issued Exhibit D2 notice demanding contribution which was followed by Exhibit D3 Form C-18 notice and Exhibit D4 order under Section 45A of the Act. Challenging those proceedings, respondent filed an application for a declaration that the

establishment is not coverable under the Act on two grounds. Firstly it was contended that the total number of employees in the establishment never exceeded more than 9 during the relevant period. Secondly it was contended that no manufacturing process with the aid of power was carrying on in the establishment. Appellant filed a detailed written statement contending that respondent was employing more than 12 employees on the date of inspection and in the establishment of the respondent manufacturing process was carried out with the aid of power. The Insurance Court on evidence found that the total number of employees engaged were less than 10 though the establishment was carrying on manufacturing process with the aid of power. Insurance Court further found that the respondent was running a show room for sale and service of two wheelers and a 3 H.P. L.G. make compressor was used with the aid of power. It was also found that it was an establishment engaged in the manufacturing process with the aid of power. That is a finding of fact based on good evidence.

3. Insurance Court granted a declaration as prayed for

after finding that the number of employees engaged by the establishment was less than 9. In the application itself the respondent had stated that P. Madhu, V.P. Babu and N.P. Sumith were apprentices engaged for studying the repairing of motor cycles and they were appointed under the provisions of the Standing Orders of the establishment. Respondent also produced a document showing payment of stipend to the apprentices. The Insurance Court on an appreciation of the evidence found that the above three persons were apprentices engaged under the provisions of the Standing Orders of the establishment and they cannot be treated as employees.

4. I have carefully gone through the findings. The oral as well as documentary evidence adduced in this case clearly establish that the above stated three persons were engaged by the respondent under the provisions of the Standing Orders of the establishment. So the evidence on record clearly establishes that respondent did not engage 10 or more persons. Since one limb of the definition is not satisfied, the finding of the Insurance Court that the respondent is not an establishment liable to be covered under the provisions of

the Act is perfectly correct and does not call for any interference. The appeal is without any merit and the same is only to be dismissed.

In the result, appeal is dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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J U D G M E N T

21ST NOVEMBER, 2007